United States Department of Labor
Employees' Compensation Appeals Board

S.T., Appellant	)	
and	)	**Docket No. 15-0207**
	)	**Issued: July 9, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Shaker Heights, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 7, 2014 appellant, through counsel, filed a timely appeal from an August 27, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant met his burden of proof to establish a recurrence of disability on April 18, 2013 causally related to his August 31, 2011 employment injury.

FACTUAL HISTORY

OWCP accepted that on August 31, 2011 appellant, then a 51-year-old, letter carrier, fell down stairs and scraped his hands and left knee in the performance of duty. It accepted his claim

[1] 5 U.S.C. § 8101 *et seq.*

for contusion of the left wrist and elbow. Appellant returned to a limited-duty position on December 17, 2011. He received compensation benefits.

Initial medical reports noted that appellant had a prior history of bilateral carpal tunnel syndrome. X-rays were normal. Appellant received treatment from Dr. Nader Paksima, an osteopath specializing in hand and orthopedic surgery. On January 18, 2012 Dr. Paksima requested authorization for surgery for the basal joint with or without ligament reconstruction and pinning. He continued to treat appellant and submit reports. In an April 17, 2013 report, Dr. Paksima noted that surgical authorization had been denied. He explained that appellant's condition was worsening and he had increased pain, numbness, and tingling in his left hand. Dr. Paksima examined appellant and found a positive basal joint grind test and positive signs of carpal tunnel syndrome on the left side. He recounted that on August 31, 2011 appellant's history of injury included a fall on outstretched hands. Dr. Paksima referred to thumb x-rays, which showed an incongruous basal joint with secondary changes most likely related to some type of a traumatic event. He opined that appellant needed a basal joint arthroplasty in the form of trapezium excision with or without a ligament reconstruction. Dr. Paksima opined that "[i]n my opinion, the injury is consistent with his work injury [of] August 31, 2011, and based upon a reasonable degree of medical certainty, it appears to be related to that work[-]related incident." He explained that appellant's clinical findings indicated carpal tunnel syndrome on the left side. Dr. Paksima suggested a carpal tunnel release to be performed at the same time as his other left hand surgery. He advised that appellant's last electromyogram (EMG) study was in 2011 and that a new one was needed to review the median nerve in the left hand. In reports dated May 29 through July 31, 2013, Dr. Paksima continued to recommend surgery. He stated that the basal joint problem and the need for surgery were related to his job-related injury of August 31, 2011.

On April 18, 2013 appellant stopped work completely and filed a recurrence of disability alleging that on August 8, 2013 he had sustained a recurrence of his August 31, 2011 injury. He noted that, after the injury, he was on limited duty working six hours, then five hours, and then down to three hours per day. Appellant explained that on April 18, 2013 he was no longer working at all due to pain. He reported that he had no feeling in his left hand and wrist.

In a September 3, 2013 report, Dr. Paksima noted that appellant could return to light duty on September 5, 2013 and resume work with the use of his left hand. In a September 16, 2013 report, Dr. Paksima repeated his request for authorization of surgery because appellant's condition was related to his work injury.

In a letter dated September 30, 2013, OWCP advised appellant of the additional factual and medical information needed to establish his claim for a recurrence.[2] It explained that, following the original injury, appellant returned to limited-duty work on December 17, 2011[3]

In an October 2, 2013 report, Dr. Paksima noted that appellant had pain in his left wrist and base of the thumb. He indicated that on the right side appellant experienced numbness and

[2] In a separate September 30, 2013 decision, OWCP denied authorization for the surgery to the left hand. It noted that the diagnoses for arthritis and carpal tunnel syndrome were not causally related.

[3] Although 2013 was indicated, this is a typographical error.

tingling. Dr. Paksima related that appellant had returned to work due to "financial reasons, albeit with pain" and wore a wrist splint to work. He found that, on the left side, appellant had instability at the base of the thumb and pain over the basal joint. There was also a palpable, audible, visible popping that occurred when appellant moved his thumb from joint subluxation. Dr. Paksima found a positive basal joint grind test.

Regarding the right wrist, Dr. Paksima found a positive carpal tunnel compression test, positive Tinel test, 5/5 muscle strength with no sign of atrophy and a positive Phalen test. He again opined that the injury was "consistent with his work injury of [August 31, 2011] and based on the reasonable degree of medical certainty, it appears to be related to that work-related incident." Dr. Paksima continued to treat appellant and submitted reports.

In a decision dated November 19, 2013, OWCP denied appellant's claim for a recurrence of disability. It found that the evidence failed to establish that he was disabled, or further disabled, due to a material change of the accepted conditions. By letter dated November 25, 2013, counsel requested a hearing.

In a letter dated April 14, 2014, counsel requested that the claim be expanded.

In an April 30, 2014 report, Dr. Paksima noted continued pain in appellant's basal joint. He found crepitus, a snapping tendon and found that the extensor pollicis longus tendon was subluxating. Dr. Paksima related that appellant's condition was worsening. He referred to recent x-rays which revealed a progressive worsening, including post-traumatic arthritis, subluxation, and bone spur formation in the basal joint of the thumb.

By letter dated May 1, 2014, OWCP referred appellant for a second opinion examination with Dr. Leon Sultan, a Board-certified orthopedic surgeon, with regard to the relationship of the left thumb condition to the accepted injury.

In a May 15, 2014 report, Dr. Sultan noted appellant's history of injury and treatment and conducted an examination. He provided findings for the left thumb and hand, which included mild swelling of the left thumb, especially at the basal region. Dr. Sultan found basal thumb crepitus on the left during range of motion testing. He also examined the left elbow and left knee which were unremarkable. Dr. Sultan noted that the contusions to the left elbow and left knee were causally related, but there was no residual orthopedic disability. He determined that appellant was postcontusion to the left elbow and left knee with blunt trauma to the left wrist, thumb, and hand. Dr. Sultan opined that his orthopedic examination failed to confirm any ongoing carpal tunnel syndrome. He diagnosed post-traumatic left basal thumb arthrosis with probable instability and subluxation of the extensor pollicis longus tendon.

Dr. Sultan opined that appellant's left basal thumb condition and wrist condition and the need for surgery were causally related to the accepted injury. He confirmed that appellant was in need of surgery at the base of the left thumb for repair of the subluxing extensor pollicis longus tendon and stabilization of the left basal thumb articulation. Dr. Sultan provided a work capacity evaluation indicating that appellant could work up to five hours per day with limitations on pushing, pulling, and lifting.

The hearing was held on June 10, 2014. During the hearing, appellant confirmed that, prior to stopping work, he had worked five hours per day and was provided three hours compensation from OWCP. He stated that, after returning to work, he only worked four hours per day because going out to the street for delivery was too painful.

In a letter dated June 25, 2014, appellant's representative noted that Dr. Sultan's report revealed that his injury was severe and should be expanded to include the conditions identified stated in the report.

Dr. Paksima continued to treat appellant and submit reports in which he continued to request surgery to include a left basal joint arthroplasty with possible ligament reconstruction. He noted that appellant continued to work light duty with a 10-pound lifting restriction, however, he related that appellant reported that he routinely had to lift boxes weighing up to 50 pounds at work. This caused significant pain. In an August 6, 2014 duty status report, Dr. Paksima indicated that appellant was able to perform light duty for eight hours per day to include a 10-pound lifting restriction.

In an August 27, 2014 decision, the hearing representative affirmed the November 19, 2013 decision. Regarding the thumb condition and surgery, she found that this was a separate issue that remained before OWCP and that it was not considered or denied in the prior decision.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations provides that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[4]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantive evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements.[5]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.[6] This consists of a physician's

[4] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[5] *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[6] *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[7] The physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[9]

ANALYSIS

Appellant's claim was accepted for contusion of the left wrist and elbow. He returned to a limited-duty position on December 17, 2011. On April 18, 2013 appellant stopped work completely and claimed a recurrence of total disability. On September 30, 2013 OWCP advised him of the type of medical and factual evidence needed to establish his claim for a recurrence of disability.

Appellant has not alleged a change in the nature and extent of his light-duty job requirements. He must offer medical evidence that he became disabled again due to a spontaneous worsening of his accepted work-related conditions.[10]

However, appellant did not submit any medical evidence to support that he was disabled due to a worsening of his accepted work-related conditions. The record contains numerous reports dating from January 18, 2012 to August 6, 2014 from Dr. Paksima. However, Dr. Paksima reports tend to support expansion of the claim and a need for surgery. They do not offer any opinion that appellant had increased disability due to a worsening of his accepted contusions. The Board notes that Dr. Paksima did not opine in any of his reports that appellant had a recurrence of disability from his accepted contusions. Dr. Paksima did not offer any opinion to explain why appellant was unable to perform his part-time limited-duty position, because of the accepted contusion injuries. Thus, his reports are of insufficient to establish a recurrence of disability due to the accepted contusions.

In a May 15, 2014 report, Dr. Sultan, the second opinion physician supported the need for surgery and that appellant's left basal thumb condition was causally related to the work injury. However, OWCP has not adopted Dr. Sultan's opinion and expanded the claim to include additional medical conditions.

[7] *Duane B. Harris*, 49 ECAB 170, 173 (1997).

[8] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[9] *Walter D. Morehead*, 31 ECAB 188 (1986).

[10] *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

Appellant did not establish that there was a change in the nature or extent of the accepted injury-related condition or a change in the nature and extent of the light-duty requirements, which would keep him from performing his light-duty position.

The reports of Drs. Paksima and Sultan concur that appellant's left basal thumb condition is due to the employment injury. As the August 27, 2014 decision did not rule on this particular matter, it is not presently before the Board.[11]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability on April 18, 2013 causally related to his August 31, 2011 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[11] *See* 20 C.F.R. § 501.2(c). The Board has noted that on April 14 and June 25, 2014, appellant requested that his claim be expanded to include the thumb and wrist conditions diagnosed, and found to be causally related, by Dr. Paksima and Dr. Sultan. Appellant has repeatedly requested authorization for surgery recommended by Dr. Paksima and Dr. Sultan. The expansion of appellant's claim and authorization for surgery are clearly before OWCP and should be decided without further delay.